

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2017

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.33678 of 2016

&

WMP.No.29059 of 2016

N.Visalakshi

... Petitioner

Vs

1.The Director of Treasuries and Account,
Panagal Building
Saidapet, Chennai - 600 015.

2.The Assistant Treasury Officer,
Sub-Treasury
Walajapet, Vellore District.

3.The Treasury Officer,
District Treasury, Vellore District.

4.The Principal Accountant General (A&E),
Teynampet, Chennai - 600 018.

5.The Secretary to Government
Finance (P.C.) Department,
Fort St.George, Secretariate,
Chennai - 600 009.

... Respondents

PRAYER: Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the order in Pde R.C.No.252/A3/2016, dated 18.02.2016 of the 2nd respondent herein and quash the same and to direct the respondents to pay the monthly pension which received by the petitioner prior to the impugned order and further direct to return the amount remitted by the petitioner in the Sub-Treasury, Wallajapet, pursuant to the impugned order.

For Petitioner : Mr.R.Muthukkannu

For Respondents: Mr.S.Gunasekaran
Additional Government Pleader
(R1 to R3 & R5)
Mr.V.Vijayshankar for R4

O R D E R

The relief sought for in this writ petition is not to effect recovery and the order of refixation of pension issued by the second respondent in proceeding dated 18.02.2016 is also under challenge in this writ petition.

2.The writ petitioner was appointed as Higher Grade Teacher and subsequently posted as Grade I, Tamil Pandit. The selection grade in the post of Tamil Pandit was also granted and, the writ petitioner retired from service on 31.05.1990 and on attaining the age of superannuation. The pension of the writ petitioner was revised based on the Government orders and the writ petitioner was continuously receiving the revised pension. Suddenly the order of revision of pension and recovery was issued by the Assistant Treasury Officer, Sub-Treasury Walajapet, in proceeding dated 18.02.2016.

3.The learned counsel appearing for the writ petitioner fairly submits that in respect of revision, he may not have any serious objection and the pay can be revised in accordance with the Government orders, on this subject. However, the recovery cannot be imposed against the petitioner, in view of the settled legal principles laid down by the Honorable Supreme Court of India in the case of State of Punjab Others Vs Rafiq Masih (White Washer) and Others reported in (2015) 4 SCC 334. Paragraph No.18 of this judgment is relevant for the purpose of this case and the same is extracted hereunder:

"18.It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i)Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D Service).

(ii)Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii)Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv)Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v)In any other case, where the court

arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

4.The case of the writ petitioner falls under category second in which, the Honorable Supreme Court has stated that no recovery can be effected from the retired employees. The writ petitioner was allowed to retire on 31.05.1990 and now, attained the age of 85 years. The sudden recovery will affect his livelihood and at the age of 85 years, any pensioner have to spend more amount for medical expenditure and in the event of imposing recovery, the writ petitioner will be suffering to meet out such medical expenditures. Further, there is no misrepresentation on the part of the writ petitioner, in respect of the revision of pension and all such revision of pension was carried out at the instance of the respondents, for which the writ petitioner cannot be blamed. In such view of the matter, the order of recovery issued by the third respondent in proceeding Rc.No.252/A3/2016 dated 18.02.2016 stands quashed and the amount of recovery already remitted by the writ petitioner to be reimbursed within a period of four weeks from the date of receipt of a copy of this order and in respect of revision, the same can be corrected in accordance with the Government orders. Accordingly, the writ petition stands partly allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

tkp/sk

To

1.The Director of Treasuries and Account,
Panagal Building
Saidapet, Chennai - 600 015.

2.The Assistant Treasury Officer,
Sub-Treasury
Walajapet, Vellore District.

3.The Treasury Officer,
District Treasury, Vellore District.

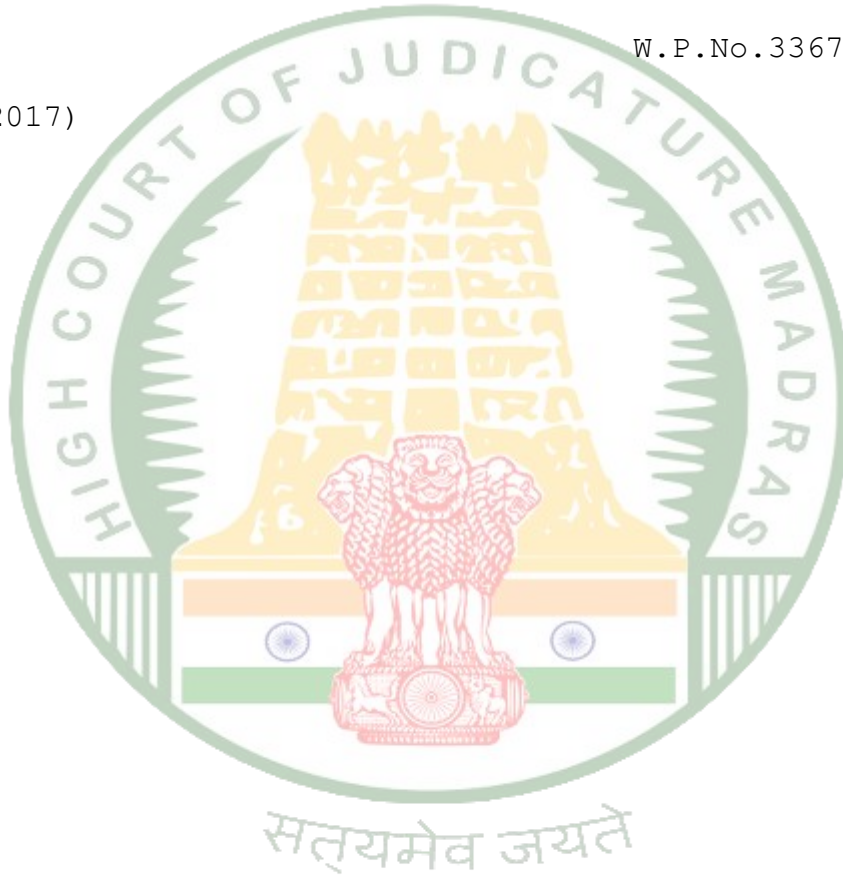
4.The Principal Accountant General (A&E),
Teynampet, Chennai - 600 018.

5.The Secretary to Government
Finance (P.C.) Department,
Fort St.George, Secretariate,
Chennai - 600 009.

+1cc to Mr.R.Muthukkannu, Advocate, S.R.No.60292
+1cc to the Government Pleader, S.R.No.61324

KS(CO)
GN(18/09/2017)

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